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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA  
16

17 DELPHINE ALLEN, et al.

18 Plaintiffs,

19 v.

20 CITY OF OAKLAND, et al.,

21 Defendants.  
22  
23

Case No. C-00-4599 TEH

**DEFENDANT CITY OF OAKLAND'S  
STATEMENT IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR SANCTIONS**

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1 Defendant City of Oakland ("City") opposes Plaintiffs' Motion for Sanctions ("the Motion")  
 2 on several grounds. First the Motion is, at best, premature in the sense it was filed before City had  
 3 the opportunity to investigate the alleged wrongdoings by two of its officers on crowd control duty  
 4 during the Occupy Oakland protests on November 2, 2011. A basic objective of the Negotiated  
 5 Settlement Agreement ("NSA") between the parties in *Allen et al. v. City of Oakland et al.* is to  
 6 ensure that the Oakland Police Department ("OPD") develops and institutionalizes best professional  
 7 police practices. A critical component of best professional police practices is institutionalizing the  
 8 process of investigating and acting upon complaints of inappropriate officer conduct. The relief  
 9 sought by plaintiffs is inconsistent with this NSA goal because it asks the Court to impose sanctions  
 10 before City's investigative and administrative appeals process has been completed. To have the  
 11 Court impose sanctions prior to a finding that City has violated the NSA infers that City's processes  
 12 are inadequate to perform this function. This result would weaken, not strengthen, the goals of the  
 13 NSA.

14 City acted decisively on the allegation that on or about November 2, 2011, an Oakland  
 15 Police Officer performing crowd control duty concealed his name label (the "Incident"). Chief of  
 16 Police Howard Jordan learned of the Incident on or about November 4, 2011. (*Declaration of Chief*  
 17 *of Police Howard Jordan in Support of City of Oakland's Opposition to Plaintiffs' Motion for*  
 18 *Sanctions, p. 2, lines 4-11*). Chief Jordan understood the seriousness of the complaint and ordered  
 19 the Internal Affairs Division ("IAD") of the Oakland Police Department to immediately begin an  
 20 Expedited Investigation (the "Investigation") into the allegation of the officer's conduct and into  
 21 whether that officer's supervisor had failed to discharge his duty as a supervisor. (*Jordan*  
 22 *Declaration, p. 2, lines 6-21*). "Expedited" means that the Investigation assumed priority over all  
 23 other investigations. (*Jordan Declaration, p. 2, lines 24-25*).

24 The Investigation was completed in less than one month and on December 1, 2011 Chief  
 25 Jordan reviewed and approved the Investigation's conclusions and recommendations. Based on his  
 26

1 review and approval, on December , Chief Jordan ordered action that he deemed appropriate. Chief  
2 Jordan's actions are now subject to the administrative due process rights of the officers to whom  
3 Chief Jordan's action applies. (*Jordan Declaration, p. 3, lines 1-12*).

4 Third, City opposes plaintiffs' Motion on the grounds that granting the relief that plaintiffs  
5 seek would impede the ability of the City of Oakland ("City") to effectively discipline police  
6 officers and would impede its ability to defend its disciplinary actions in arbitration proceedings. A  
7 decision by the Court to impose sanctions allows disciplined officers to argue in grievance  
8 arbitrations that City's disciplinary actions were not impartial. The officers will argue that City's  
9 actions were influenced by a desire not to reach results in their administrative proceedings that are  
10 inconsistent with the Court's determination to award sanctions. This result will make it more  
11 difficult for City to prevail at arbitrations challenging officer discipline.

12 Fourth, the remedies that plaintiffs seek will result in waste of scarce judicial resources  
13 because they would create parallel proceedings arising out of the Incident, i.e., a judicial proceeding  
14 by the court against officers who allegedly violated the NSA or a court order arising from the NSA  
15 and an administrative proceeding by City against the same officers for violating City rules. This  
16 result is wasteful and unnecessary, particularly given that plaintiffs have proffered no evidence that  
17 City is not addressing this manner consistent with its NSA obligations.

18 Judicial resources would also be wasted because due process would require a "Just Cause"  
19 hearing which would be vigorously contested by the officers and the City and would likely lead to  
20 appeals if sanctions are imposed. The record established by plaintiffs is void of facts that establish a  
21 basis upon which the hearing may be held.

22 Fifth, plaintiffs have not established an evidentiary basis upon which the court can grant the  
23 Motion. The Incident is not related in time, place, manner or issues to the issues in *Allen*. Plaintiffs  
24 have proffered no evidence that the individuals against whom they seek sanctions intended or  
25 otherwise sought to thwart, frustrate or in anywise violate the provisions of the NSA or were acting  
26



1 in disregard of a court order. Also, neither of the individuals against who sanctions are sought, are  
 2 named in *Allen*; nor have they ever been before this court in *Allen*.

3 Sixth, the NSA pertains to systemic reforms addressed in *Allen*. While the reach of the NSA  
 4 does pertain to actions by persons responsible for implementing the systemic reforms, it does not  
 5 pertain to random, unauthorized acts by individual officers who violate City rules and regulations.  
 6 To award sanctions as requested by plaintiffs would allow plaintiffs to relate any case to *Allen*  
 7 thereby creating the anomaly that court imposed sanctions pursuant to the NSA are available to  
 8 plaintiffs as a remedy virtually every time an Oakland Police Officer allegedly acts in violation of  
 9 the 4<sup>th</sup> Amendment or in a manner that plaintiffs believe violates the NSA. The Court would risk  
 10 becoming bogged down in fact finding mini-trials that needlessly parallel simultaneous City  
 11 personnel administrative proceedings pertaining to the same officers and incident.

12 Absent a finding that City's investigation or its actions based on the investigation violated or  
 13 are inconsistent with the goals and purpose of the NSA, City believes granting plaintiffs' requested  
 14 relief would undermine City's ability to independently investigate and discipline its police officers.

15 **I. CONCLUSION:**

16 Based on the foregoing, Defendant City of Oakland urges the Court to deny Plaintiffs'  
 17 Motion for Sanctions.

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 19 DATED: December 12, 2011

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 21 BARBARA J PARKER, City Attorney  
 22 RANDOLPH W. HALL, Chief Assistant City Attorney  
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24 By: \_\_\_\_\_/s/\_\_\_\_\_  
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